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*Attorney for Plaintiff John Doe*

*Attorneys for Plaintiffs Mark Brnovich and  
the State of Arizona*

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Mark Brnovich, in his official capacity as  
Attorney General of Arizona; the State of  
Arizona; and John Doe,

No. 2:21-cv-01568-MTL

Plaintiffs,

**MOTION FOR LEAVE TO  
PROCEED PSEUDONYMOUSLY**

v.

Joseph R. Biden in his official capacity as  
President of the United States; Alejandro  
Mayorkas in his official capacity as  
Secretary of Homeland Security; United  
States Department of Homeland Security;  
Troy Miller in his official capacity as  
Senior Official Performing the Duties of  
the Commissioner of U.S. Customs and  
Border Protection; Tae Johnson in his  
official capacity as Senior Official  
Performing the Duties of Director of U.S.  
Immigration and Customs Enforcement;  
Ur M. Jaddou in her official capacity as  
Director of U.S. Citizenship and  
Immigration Services; United States  
Office of Personnel Management; Kiran  
Ahuja in her official capacity as director  
of the Office of Personnel Management  
and as co-chair of the Safer Federal  
Workforce Task Force; General Services  
Administration; Robin Carnahan in her

1 official capacity as administrator of the  
2 General Services Administration and as  
3 co-chair of the Safer Federal Workforce  
4 Task Force; Office of Management and  
5 Budget; Shalanda Young in her official  
6 capacity as Acting Director of the Office  
7 of Management and Budget and as a  
8 member of the Safer Federal Workforce  
9 Task Force; Safer Federal Workforce  
10 Task Force; and Jeffrey Zients in his  
11 official capacity as co-chair of the Safer  
12 Federal Workforce Task Force and  
13 COVID-19 Response Coordinator

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Defendants.

1 Plaintiff John Doe (“Plaintiff”), by and through undersigned counsel, hereby moves  
2 for leave from this Court to proceed pseudonymously.

3 **I. Introduction**

4 John Doe is a federal employee challenging the U.S. government’s mandate that  
5 federal employees must receive a COVID-19 vaccine. His continued employment is  
6 contingent on compliance with the very mandate he now challenges. In addition to risking  
7 the loss of his existing employment, wider disclosure of his identity risks enormous  
8 negative consequences to his future ability to work for the federal government where he  
9 has worked his entire career.

10 Plaintiff does not oppose disclosure of relevant identifying information to counsel  
11 for Defendants, provided that such information and his identity is protected from  
12 disclosure beyond counsel in this case and is not disclosed to Defendants themselves or to  
13 the public at large. Should identifying information be necessary to adjudicate a claim or  
14 defense in this action, it should be filed under seal.

15 **II. Background**

16 Plaintiff has been an employee of the Federal government for 30 years. He works  
17 at a federal worksite located within the State of Arizona. He has an exemplary personnel  
18 record, and no record of prior discipline, with “Outstanding” performance evaluations the  
19 past two years (which is the highest possible) and nothing in recent memory below  
20 “excellent” (which is the next highest evaluation). He strongly opposes the COVID-19  
21 vaccine, and he has not taken it. He also opposes Defendants’ vaccine mandate and has  
22 no intention of complying with it.

23 Plaintiff Doe has requested a medical exemption from Defendants’ federal  
24 employee vaccine mandate. Given the limited and strict approach Defendants have applied  
25 to exemption requests, and reports that nearly all such requests are being denied, Plaintiff  
26 Doe expects that his medical exemption request will be denied.

1 Defendants have instructed federal agencies to discipline and remove employees  
2 who refuse the vaccine, and Plaintiff expects that this will be his fate, absent relief from  
3 this Court. Moreover, Defendants have made a number of negative and critical remarks  
4 about those who refuse to take the vaccine, and Plaintiff reasonably fears that he will be  
5 subject to retaliation for challenging the mandate. Having been involved in numerous  
6 internal investigations as a local investigator who is assigned to retrieve data regarding  
7 targets of investigation and reviewing investigative reports, Plaintiff is keenly aware of  
8 the lengths DOJ will travel to assault the character and employment status of their targets.  
9 He is aware of searches of social media accounts, government e-mail accounts,  
10 government issued phones and vehicle tracking for non-criminal policy violations. These  
11 tactics have no constraints in a non-criminal investigation when conducted on government  
12 property.

### 13 **III. Legal Standard**

14 When “pseudonyms are used to shield the anonymous party from retaliation, the  
15 district court should determine the need for anonymity by evaluating” five factors. *Does I*  
16 *thru XII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). The factors are  
17 “(1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s  
18 fears, (3) the anonymous party’s vulnerability to such retaliation, (4) the prejudice to the  
19 opposing party, and (5) the public interest.” *Doe v. Kamehameha Schools/Bernice Pauahi*  
20 *Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010) (cleaned up).

### 21 **IV. Argument**

22 Here, all five factors weigh in favor of granting pseudonymity, or are at least  
23 neutral.

24 The severity of the threatened harm is at minimum the stakes of the underlying  
25 action: federal employees stand to lose their jobs if they do not comply with the mandate.  
26 John Doe could be removed from his position and have his duties reassigned pending

1 disciplinary action for non-compliance with the edict. The final action would be removal.  
2 The potentially career-ending harm Plaintiff faces weighs in favor of granting  
3 pseudonymity.

4 Plaintiff is at the mercy of Defendants with respect to his job. Plaintiff Doe has not  
5 yet taken the vaccine and will not take it. According to his claim in this case, he is in clear  
6 violation of the mandate and is therefore subject to discipline and eventual termination.  
7 His absolute vulnerability to retaliation weighs in favor of granting pseudonymity.

8 Plaintiff's fear of retaliation is entirely reasonable. Indeed, the challenged mandate  
9 promises that retaliation. Defendants have made a host of ominous and threatening  
10 comments related to their vaccine mandate, starting with President Biden's statement that  
11 his "patience is wearing thin." First Amended Complaint ¶ 7. Plaintiff's reasonable fear  
12 of retaliation weighs in favor of granting pseudonymity.

13 Defendants will not be prejudiced in this action by Plaintiff's pseudonymity.  
14 Plaintiff agrees to disclose identifying information to counsel for Defendants as necessary  
15 to support a claim or defense, provided such information is not disclosed further, and only  
16 filed under seal in this action. This factor is neutral.

17 The public interest weighs in favor of granting Plaintiff's motion because it will  
18 allow "extremely controversial and very important issues" to be "decided on the merits."  
19 *Kamehameha Schools*, 596 F.3d at 1042-43. And while it might appear on the surface that  
20 pseudonymity would be in tension with "the common law rights of access to the courts  
21 and judicial records," there is no conflict here. The public's interest in identifying *this*  
22 Plaintiff is at best minimal. Across the country, a multitude of employees affected by  
23 vaccine mandates are filing similar claims against their employers, including against  
24 Defendants. Each such plaintiff shares a common concern about the constitutionality and  
25 legality of vaccine mandates, while at the same time, specific identifying information  
26 about a particular plaintiff challenging such mandates has little public relevance and no

1 bearing on the validity or invalidity of his claims. The public's interest in permitting  
2 pseudonymity to resolve these legal issues therefore outweighs its interest in specific  
3 disclosure of identifying information in this case.

4 **V. Conclusion**

5 Plaintiff respectfully requests this Court (1) permit him to proceed herein using the  
6 fictitious name "John Doe;" (2) direct all parties to refer to him by this fictitious name in  
7 all filings; (3) direct all parties to redact his real name from any court filings or exhibits  
8 thereto; (4) where redaction is futile, file identifying information only under seal, and  
9 afford such other and further relief as may be just and proper.

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11 RESPECTFULLY SUBMITTED this 22nd of October, 2021.

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14 **WILENCHIK & BARTNESS PC**

15  
16 By: /s/ Jack Wilenchik (with permission)

17 Jack Wilenchik (No. 029353)

18 *Attorney for Plaintiff John Doe*

19 **MARK BRNOVICH**  
20 **ATTORNEY GENERAL**

21 By: /s/ James K. Rogers

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